

1 relating to the North Hollywood Operable Unit of the San Fernando  
2 Valley Area 1/North Hollywood Area National Priorities List site  
3 that was signed in September 1987 by the EPA Region IX Deputy  
4 Regional Administrator, acting for the Regional Administrator,  
5 and all attachments thereto.

6 S. "1987 NHOU ROD Response Costs" shall mean all past and  
7 future costs that the Plaintiffs or any other person have  
8 incurred or will incur for implementation of the remedy selected  
9 in the 1987 NHOU ROD.

### 10 III. JURISDICTION

11 This Court has jurisdiction over the subject matter of this  
12 action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C.  
13 §§ 9606, 9607, and 9613(b). This Court also has personal  
14 jurisdiction over the Settling Defendants. Solely for the  
15 purposes of this Consent Decree, the Settling Defendants waive  
16 all objections and defenses that they may have to jurisdiction of  
17 this Court or to venue in this District and shall not challenge  
18 the entry of this Consent Decree or this Court's jurisdiction to  
19 enter and enforce this Consent Decree.

### 20 IV. PARTIES BOUND

21 This Consent Decree is binding upon the Plaintiffs, and upon  
22 the Settling Defendants and their heirs, successors, and assigns.  
23 Any change in ownership or corporate or other legal status,  
24 including but not limited to any transfer of assets or real or  
25 personal property, shall in no way alter the status or  
26 responsibilities of the Settling Defendants under this Consent  
27 Decree.

1  
2 V. REIMBURSEMENT OF RESPONSE COSTS

3 A. PAYMENT OF RESPONSE COSTS. Except as otherwise  
4 provided in Paragraph V.F, within thirty (30) days of entry of  
5 this Consent Decree, each Settling Defendant shall pay the  
6 settlement amount it is obligated to pay pursuant to Paragraph  
7 V.F below to the United States and to the State for 1987 NHOU ROD  
8 Response Costs and Past Basin-wide Response Costs.

9 B. FORM OF PAYMENT. Payment to the United States by each  
10 Settling Defendant shall be made in accordance with instructions  
11 provided by Plaintiff United States to the Settling Defendants  
12 upon execution of the Consent Decree. Of the total amount to be  
13 paid to EPA pursuant to this Consent Decree, \$ 2,933,000 shall be  
14 deposited in the EPA Hazardous Substance Superfund as  
15 reimbursement for past response costs incurred at or in  
16 connection with the Site as of the Effective Date of this Consent  
17 Decree, and \$ 1,817,000 ("the Remainder") shall be deposited in  
18 the NHOU Special Account to be retained and used to conduct or  
19 finance the response action at or in connection with the Site.  
20 Any balance remaining in the NHOU Special Account after  
21 completion of the response at or in connection with the Site  
22 shall be deposited in the EPA Hazardous Substance Superfund.  
23 Payment to the State shall be made in the form of a certified  
24 check or cashier's check made payable to "Cashier, Department of  
25 Toxic Substances Control," and shall be forwarded to:

26 Department of Toxic Substances Control  
27 State of California  
Accounting Office  
400 P Street, 4th Floor  
28 Sacramento, California 95814

1 Each Settling Defendant shall send a transmittal letter with the  
2 check referencing the North Hollywood Operable Unit/San Fernando  
3 Valley Area 1 Site, Project Nos. 300126 and 300287. Each  
4 Settling Defendant shall also send a copy of its check and  
5 transmittal letter to the State as specified in Section XI.

6 C. FAILURE TO MAKE TIMELY PAYMENTS

7 1. Interest on Late Payments. In the event that any  
8 payments required under Section V are not made when due, interest  
9 on the unpaid amount shall begin to accrue thirty (30) days after  
10 the effective date of this Consent Decree, at the rate specified  
11 in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), through the  
12 date of payment.

13 2. Stipulated Penalties. If any amounts due to the  
14 Plaintiffs under this Consent Decree are not paid by the required  
15 date, the delinquent Settling Defendant shall pay as a stipulated  
16 penalty, in addition to the interest required by Section V.C.1  
17 above, \$1000 for the first 30 days and \$5,000 thereafter per day  
18 that such payment is late. Stipulated penalties are due and  
19 payable within thirty (30) days of the delinquent Settling  
20 Defendant's receipt from either Plaintiff of a demand for payment  
21 of the penalties. All payments of stipulated penalties to the  
22 United States shall be made in the form of a certified check or  
23 cashier's check made payable to "EPA Hazardous Substance  
24 Superfund," and shall be forwarded to:

25 U.S. Environmental Protection Agency, Region IX  
26 Superfund Accounting  
27 P.O. Box 360863M  
Pittsburgh, Pennsylvania 15251  
Attention: Collection Officer for Superfund

28 The delinquent Settling Defendant shall send a transmittal letter

1 with the check referencing the North Hollywood Operable Unit/San  
2 Fernando Valley Area 1 Site and the civil action number 93-6490-  
3 MRP(Tx), and shall also state that the funds are to be applied to  
4 site spill identifier numbers N1 and 59. The delinquent Settling  
5 Defendant shall also send copies of the check and transmittal  
6 letter to the United States as specified in Section XI. All  
7 payments of stipulated penalties to the State shall be made in  
8 the form and manner specified in Section V.B above. Penalties  
9 shall accrue as provided above regardless of whether Plaintiffs  
10 have notified the delinquent Settling Defendant of the violation  
11 or made a demand for payment, but need only be paid upon demand.  
12 However, payment shall be considered timely with respect to each  
13 Settling Defendant so long as the Settling Defendant has given  
14 timely instructions to a competent financial institution for the  
15 subject Electronic Funds Transfer ("EFT") to be made in a timely  
16 manner, and has promptly upon the transfer obtained a written  
17 verification from the financial institution that the EFT was made  
18 in accordance with the Settling Defendant's instructions.

19 D. COLLECTION ACTIONS. If either Plaintiff must bring an  
20 action to collect any payment required by this Consent Decree,  
21 the delinquent Settling Defendant shall reimburse the Plaintiff  
22 bringing the action for all costs of such action, including but  
23 not limited to costs of attorney time.

24 E. RELATION TO OTHER REMEDIES. Payments made under  
25 Section V shall be in addition to any other remedies or sanctions  
26 available to the Plaintiffs by virtue of a delinquent Settling  
27  
28

1 Defendant's failure to make timely payments required by this  
2 Consent Decree.

3 F. PAYMENT SCHEDULE. The Settling Defendants shall pay  
4 the United States and the State the following sums, when and in  
5 the manner described in paragraphs V.A and B, above.

	<u>United States</u>	<u>State of California</u>
6 Lockheed Martin Corporation 7 f/k/a Lockheed Corporation/ 8 Airport Group International, Inc. f/k/a 9 Lockheed Air Terminal, Inc.	\$ 2,600,000	\$ 133,572
10 Calmat Co./Pick Your Part 11 Auto Wrecking/Waste Management 12 Disposal Services of California, 13 Inc.	\$ 1,500,000	\$ 78,215
14 Pacific Steel Treating Company/ 15 Inc./Niels Bruun-Andersen, as 16 Trustee of Erik and Else Bruun- 17 Andersen Trust	\$ 325,000	\$ 16,947
18 Fleetwood Machine Products, 19 Inc./William L. Cooke and 20 Jerry Conrow, as Trustees of 21 the Amended Cooke Family Trust	\$ 325,000	\$ 16,947

22 In lieu of the lump sum settlement payment specified in  
23 Paragraph F above, the following Settling Defendants: Fleetwood  
24 Machine Products, Inc., William L. Cooke and Jerry Conrow, as  
25 Trustees of the Amended Cooke Family Trust, hereinafter  
26 "Installment Settlers," may make payments as follows:

27 Installment Settlers shall pay \$ 75,000 when and in the  
28 manner described in Paragraphs V.A. and B above in accordance  
with instructions provided by Plaintiff United States to the  
Installment Settlers upon execution of the Consent Decree. The  
Installment Settlers shall pay the balance owed to Plaintiff  
United States within six months of entry of the Consent Decree.  
Interest shall accrue up to the date the balance, including any

1 accrued interest, is paid.

2 It is understood between Plaintiffs and Installment Settlers  
3 that the Installment Settlers shall attempt to sell the real  
4 property known as 2902 Washington Street, Phoenix, Arizona, in  
5 satisfaction of their remaining \$ 250,000 obligation to Plaintiff  
6 United States under this Consent Decree. It is understood by  
7 Plaintiff State and Installment Settlers that all sale proceeds  
8 in excess of \$ 250,000 shall be immediately applied to pay some  
9 or all of the Installment Settlers' liability to Plaintiff State.  
10 In the event no real property sale proceeds are available, the  
11 Installment Settlers shall pay their liability to the State of  
12 California in accordance with instructions provided by Plaintiff  
13 State to Installment Settlers, in two equal payments, the first  
14 being due within six months of entry of this Consent Decree, and  
15 the balance owed to Plaintiff State within one year of entry of  
16 this Consent Decree.

17 VI. COVENANTS NOT TO SUE AND RESERVATIONS OF RIGHTS

18 A. PLAINTIFFS' COVENANT NOT TO SUE. In consideration of  
19 the settlement payments that will be made by each Settling  
20 Defendant under the terms of the Consent Decree, and except as  
21 specifically provided in Sections VI.B, VI.C, VI.E, and VI.F, the  
22 Plaintiffs covenant not to sue or to take administrative action  
23 against such Settling Defendant and such additional Releasees as  
24 are defined in Section II, pursuant to Sections 106 and 107(a) of  
25 CERCLA and Section 7003 of the Resource Conservation and Recovery  
26 Act and comparable state law, including but not limited to the  
27 California Hazardous Substance Account Act, Health and Safety  
28 Code Section 25300, et seq., and/or common law with regard to all

1 1987 NHOU ROD Response Costs and all Past Basin-wide Response  
2 Costs. The covenant not to sue shall take effect as to each  
3 Settling Defendant and such additional Releasees as are defined  
4 in Section II, other than the Installment Settlers, upon the  
5 receipt by Plaintiffs of the payments of that Settling Defendant  
6 required by Section V; and as to each Installment Settlor, upon  
7 the receipt by the Plaintiffs of the initial payments required by  
8 Section V of that Settling Defendant. The covenant not to sue as  
9 to each Settling Defendant is conditioned upon the Settling  
10 Defendant making all of the payments required of that Settling  
11 Defendant by this Consent Decree. The covenant not to sue  
12 extends only to the Settling Defendants and the Releasees as  
13 defined in Section II, and does not extend to any other person.  
14 In the event of any breach by a Settling Defendant of its  
15 obligations under this Consent Decree, the covenant not to sue  
16 shall remain in effect as to the other Settling Defendants and  
17 Releasees despite said breach.

18 B. PLAINTIFFS' PRE-CERTIFICATION RESERVATIONS.

19 Notwithstanding any other provision of this Consent Decree, the  
20 Plaintiffs reserve, and this Consent Decree is without prejudice  
21 to, the right to institute proceedings in this action or in a new  
22 action, or to issue an administrative order seeking to compel the  
23 Settling Defendants (i) to perform further response actions  
24 relating to the NHOU Site or (ii) to reimburse Plaintiffs for  
25 costs of response related to such further response actions, if  
26 prior to the Certification of Completion:

- 27 1. conditions at the NHOU Site, previously unknown to  
28 the Plaintiffs, are discovered, or

2. information, previously unknown to the Plaintiffs,  
is received, in whole or in part,  
and these previously unknown conditions or information together  
with any other relevant information indicates that any remedial  
action taken at the NHOU Site is not protective of human health  
or the environment. As of the date of entry of this Consent  
Decree, EPA agrees that the interim remedial measures being  
implemented at the NHOU Site under the 1987 NHOU ROD are  
protective of human health and the environment.

C. PLAINTIFFS' POST-CERTIFICATION RESERVATIONS.

Notwithstanding any other provision of this Consent Decree, the  
Plaintiffs reserve, and this Consent Decree is without prejudice  
to, the right to institute proceedings in this action or in a new  
action, or to issue an administrative order seeking to compel the  
Settling Defendants (i) to perform further response actions  
relating to the NHOU Site or (ii) to reimburse the Plaintiffs for  
such costs of response if, subsequent to the Certification of  
Completion:

1. conditions at the NHOU Site, previously unknown to  
the Plaintiffs, are discovered, or
2. information, previously unknown to the Plaintiffs,  
is received, in whole or in part,  
and these previously unknown conditions or this information  
together with other relevant information indicate that any  
remedial action taken at the NHOU Site is not protective of human  
health or the environment.

D. INFORMATION AND CONDITIONS KNOWN TO THE PLAINTIFFS.

For purposes of Section VI.B, the information and the conditions



known to the Plaintiffs shall include only that information and those conditions set forth in the 1987 NHOU ROD, the administrative record supporting the 1987 NHOU ROD, the San Fernando Valley Phase I Groundwater RI, December 1992, and all documents submitted to EPA in response to CERCLA Section 104(e) inquiries or other EPA requests prior to September 1, 1995. For purposes of Section VI.C, the information and the conditions known to the Plaintiffs shall include the information and conditions known to the Plaintiffs for purposes of Section VI.B, and that information and those conditions set forth in (i) any future Explanation(s) of Significant Differences, ROD(s), or Amendment(s) to any ROD(s) relating to the NHOU Site; (ii) the administrative record supporting any future Explanations of Significant Differences, ROD(s), or Amendments to any ROD(s) relating to the NHOU Site, (iii) all documents submitted to EPA in response to CERCLA Section 104(e) inquiries or other EPA requests prior to issuance of the Certification of Completion; and (iv) the record for the NHOU Site maintained by EPA following issuance of any ROD(s) but prior to issuance of the Certification of Completion.

E. PLAINTIFFS' GENERAL RESERVATION OF RIGHTS. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified in Section VI.A. The Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against each Settling Defendant with respect to all other matters, including, but not limited to, the following:

1. claims based on a failure by that Settling Defend-

- 1 ant to meet a requirement of this Consent Decree;
- 2 2. liability arising from the past, present, or
- 3 future disposal, release, or threat of release of
- 4 hazardous substances outside of the NHOUSite;
- 5 3. liability for damages for injury to, destruction
- 6 of, or loss of natural resources;
- 7 4. liability for response costs to enforce CERCLA or
- 8 any other federal environmental law that have been
- 9 or may be incurred by any federal agencies other
- 10 than EPA or the Department of Justice on behalf of
- 11 EPA;
- 12 5. liability for response costs to enforce CERCLA or
- 13 any state environmental law that has been or may
- 14 be incurred by any state agencies other than DTSC
- 15 or the State Department of Justice on behalf of
- 16 DTSC; and
- 17 6. criminal liability.

18 F. PLAINTIFFS' NHOUSITE-SPECIFIC RESERVATION OF RIGHTS.

19 The covenant not to sue set forth above specifically does not

20 pertain to the performance of any RI/FS other than the 1986 OU/FS

21 that formed the basis for the 1987 NHOUSITE ROD; additional response

22 actions that may be implemented pursuant to any final remedy or

23 pursuant to any future Explanation(s) of Significant Differences,

24 ROD(s), or Amendment(s) to any ROD(s); costs or activities

25 related to any OU other than the NHOUSITE, including any future

26 OU(s); or any unknown environmental condition as to which

27 Plaintiffs have reserved their rights in Paragraphs C and D

28 above.

Plaintiff State currently does not fund the costs of operation and maintenance of the NHOU Site remedy and is not seeking to recover such costs in this action. Costs of operations and maintenance are being funded by the United States and LADWP pursuant to contractual agreement. However, in the event that the State subsequently incurs operations and maintenance costs due to a failure by either the United States or the LADWP to fund the operation and maintenance costs of the NHOU Site remedy, such costs are not to be considered "1987 NHOU ROD response costs" as defined in this Consent Decree and the State reserves the right to seek recovery of such operations and maintenance costs from any potentially responsible party, including each of the Settling Defendants.

G. SETTLING DEFENDANTS' RESERVATION OF RIGHTS. Settling Defendants reserve any and all defenses or rights they may have with respect to any actions concerning the NHOU Site except any rights expressly waived in this Consent Decree. Settling Defendants retain any and all rights, claims, remedies and defenses that they have or may have against any person or entity not expressly waived in this Consent Decree, except for rights, claims and remedies any Settling Defendant has or may have against any other Settling Defendant(s) or Releasees for matters addressed in this Consent Decree, which are hereby expressly waived. This reservation shall not affect each Settling Defendant's obligation to perform its obligation under this Consent Decree, and shall not affect EPA's ability to assess stipulated penalties in accordance with Section V.C.2 (Stipulated Penalties).

H. SETTLING DEFENDANTS' COVENANT. The Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against either Plaintiff with respect to 1987 NHOU ROD Response Costs and Past Basin-wide Response Costs including, but not limited to, (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), under CERCLA §§106(b)(2), 107, 111, 112, or 113, or any other provision of law; (ii) any claim against the United States or the State, including any department, agency, or instrumentality of the United States or State pursuant to Sections 107 and 113 of CERCLA related to the 1987 NHOU ROD Response Costs or the Past Basin-wide Response Costs; or (iii) any claims arising out of response activities at the NHOU Site. However, and notwithstanding the foregoing, nothing in this Consent Decree shall be interpreted as waiving, abrogating, or resolving (1) any claims which any Settling Defendant has or may have based upon any alleged liability which the United States Department of Defense, any branch or division thereof, or any predecessor agency has or may have for conditions at the NHOU Site pursuant to CERCLA Section 106, 107, 113, 120 or 310, 42 U.S.C. §§ 9606, 9607, 9613, 9620 or 9659, or RCRA Section 7002, 42 U.S.C. § 6972, or (2) any claims which any Settling Defendant has or may have with respect to the 1987 NHOU ROD response costs or Past Basin-wide Response Costs against the United States pursuant to any contract between any Settling Defendant and the United States or any government contractor(s). Nothing in this Consent Decree shall be deemed to constitute preauthorization of

a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

VII. CONTRIBUTION PROTECTION

A. Except for the Releasees as defined in Section II, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the NHOU Site against any person not a party hereto or a Releasee.

B. With regard to claims for contribution against the Releasees for matters addressed in this Consent Decree, the Parties hereto agree that the Releasees are entitled to the protection from contribution actions or claims provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

C. "Matters addressed in this Consent Decree" mean 1987 NHOU ROD Response Costs and Past Basin-wide Response Costs and shall include any claim for such costs that either Plaintiff has or may have against any Releasee with respect to any facility located within the NHOU Site, subject only to the following qualifications and exceptions. "Matters addressed in this Consent Decree" shall include, but not be limited to, any claim for such costs that either Plaintiff has or may have against CalMat Co. or any Releasees described in Section II above as affiliates of CalMat Co. with respect to the facility located at 8251 Tujunga Avenue, Sun Valley, California, but shall not

1 include any other claim for response costs that either Plaintiff  
2 has or may have against any Releasee based upon that Releasee's  
3 CERCLA section 107(a) liability for release of a hazardous  
4 substance from a facility described in the Plaintiffs' first  
5 amended complaint(s) in these consolidated actions as a facility  
6 currently owned or operated by any Defendant other than Settling  
7 Defendants.

8 D. The Settling Defendants agree that with respect to any  
9 suit or claim for contribution brought by them for matters  
10 addressed in this Consent Decree they will notify the Plaintiffs  
11 in writing no later than sixty (60) days prior to the initiation  
12 of such suit or claim. The Settling Defendants also agree that  
13 with respect to any suit or claim for contribution brought  
14 against them for matters addressed in this Consent Decree they  
15 will notify in writing the Plaintiffs within sixty (60) days of  
16 service of the complaint on them. In addition, the Settling  
17 Defendants shall notify the Plaintiffs within ten (10) days of  
18 service or receipt of any Motion for Summary Judgment for matters  
19 addressed in this Consent Decree and within ten (10) days of  
20 receipt of any order from a court setting a case for trial for  
21 matters addressed in this Consent Decree.

22 E. The Parties recognize and acknowledge that the  
23 settlement embodied in this Consent Decree relates only to the  
24 Interim Remedial Action selected in the 1987 NHOU ROD, as well as  
25 Past Basin-wide Response Costs, and that additional remedial  
26 actions may be necessary to address the contamination at the NHOU  
27 Site. In any subsequent administrative or judicial proceeding  
28 initiated by the United States or the State and not precluded by

1 this Consent Decree for injunctive relief, recovery of response  
2 costs, or other appropriate relief relating to the NHOU Site, the  
3 Settling Defendants shall not assert, and may not maintain, any  
4 defense or claim based upon the principles of waiver, res  
5 judicata, collateral estoppel, issue preclusion, claim-splitting,  
6 or other defenses based upon any contention that the claims  
7 raised by the United States or the State in the subsequent  
8 proceeding were or should have been brought in the instant case;  
9 provided, however, that nothing in this Section VII.E affects  
10 the enforceability of the covenants not to sue set forth in  
11 Section VI.

#### 12 VIII. NHOU SITE ACCESS

13 A. Commencing upon the date of entry of this Consent  
14 Decree and terminating upon issuance of a final ROD for the NHOU  
15 Site, the Settling Defendants who own property at the NHOU Site  
16 agree to provide the Plaintiffs and their representatives access  
17 at all reasonable times to their facilities located at the NHOU  
18 Site and any other property owned or controlled by the Settling  
19 Defendants to which access is required for the implementation of  
20 response actions for the NHOU Site, including, but not limited  
21 to, the following actions:

- 22 1. monitoring, investigation, remedial, or other  
23 activities at the NHOU Site;
- 24 2. verifying any data or information submitted to  
25 either Plaintiff;
- 26 3. conducting investigations relating to  
27 contamination at or near the NHOU Site;
- 28 4. obtaining samples; and